Before the
GOVERNMENT OF THE VIRGIN ISLANDS
OF THE UNITED STATES
Public Services Commission

In re

Change of Control Proceeding for Virgin Islands Telephone Corp. d/b/a Innovative Telephone, Caribbean Communications Corp. d/b/a Innovative Cable TV St. Thomas-St. John, and St. Croix Cable TV, Inc. d/b/a Innovative Cable St. Croix

PSC Docket No. 582

ORDER IN PART GRANTING AND IN PART DENYING MOTION FOR CLARIFICATION OF MEMORANDUM OPINION AND ORDER

On March 25, 2010 the National Rural Utilities Cooperative Finance Corporation ("CFC") sent a letter to the Hearing Examiner requesting that he issue a clarification to the Memorandum Opinion and Order ("MO and O") issued in this proceeding on March 12, 2010. The clarification requested related to lines 4 through 11 at page 4 of the MO and O's description of the CFC subsidiaries that would be operating the telephone and cable television operations of Vitelco and the Cable Entities in the United States Virgin Islands

("USVI") upon approval of the proposed transfer of control. It also related to that section of the MO and O's characterization of those subsidiaries' respective ownership of the stock of Vitelco and the Cable Entities and their respective control of those entities. The Hearing Examiner will treat the request as a motion for clarification of the March 12, 2010 MO and O.

The first aspect of the request for clarification noted that CFC had created four subsidiaries for its total operations in all of the Virgin Islands and referenced each of them. Because the MO and O was concerned with describing only the ownership pattern of CFC's subsidiaries in the USVI upon approval of the transfer of control, the Hearing Examiner does not consider that it is necessary or particularly useful to mention CFC's non-USVI subsidiaries in the referenced section. For this reason the motion for clarification in this regard is denied. The motion is granted to clarify that the MO and O applies only to the ownership pattern of CFC's subsidiaries in the USVI.

The second aspect of the motion for clarification stated: "DTR, as the holding company created to hold the Group 1 subsidiaries and assets … in the USVI, will hold 100 percent of the stock of the Virgin Islands Telephone Corporation ("Vitelco") as well as the Cable Companies. CAH will not directly own any of the stock of Vitelco." Because the Hearing Examiner agrees that

CAH will not directly own any of the stock of Vitelco and will only control DTR, the entity that will own that stock, the motion for clarification in this regard is granted.

Therefore the Hearing Examiner withdraws lines 4 through 11 at page 4 of the March 12, 2010 MO and O and replaces them with the following statement:

> For purposes of its telephone and cable television operations in the United States Virgin Islands CFC has created two wholly owned holding companies for the purpose of holding the stock and assets of its (CFC's) subsidiaries in the United States Virgin Islands. Consolidated Application at 7. One is DTR Holdings, LLC ("DTR") (also referred to as CFC USVI Holdco). The other is Caribbean Asset Holdings, LLC ("CAH"). After approval of the transfer of control in this proceeding Vitelco will be a direct, wholly-owned subsidiary of DTR. Consolidated Application at 5. Also after approval of the transfer of control, the Cable Entities will be direct, wholly-owned subsidiaries of DTR. *Id.*
>
> CAH is the "umbrella holding company created by CFC" to acquire the stock and assets of Vitelco and the Cable Entities. Consolidated Application at 7. CFC is CAH's sole member. *Id.* CAH is the sole member of DTR. *Id.* at 8. After approval of the proposed transfer CAH will be "the indirect, 100-percent voting- and equity-interest holder of Vitelco and the Cable Entities. Consolidated Application at 8. Also after approval of the proposed transaction, DTR will be the direct holder of the stock and assets of Vitelco and the Cable Entities. *Id.* Even though it controls DTR, CAH will not directly own any of the stock and assets of Vitelco and the Cable Entities.

Wherefore the Hearing Examiner submits the foregoing Clarification of the March 12, 2010 Memorandum Opinion and Order to the Public Services Commission. Additionally, a separate Amended Memorandum Opinion and Order shall be issued which incorporates the changes which result from the foregoing clarification but which in all other respects remains unchanged.

Dated: April 8, 2010

/s/ Ronald W. Belfon
Ronald W. Belfon, Esquire
Hearing Examiner

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GOVERNMENT OF THE VIRGIN ISLANDS
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In re

Change of Control Proceeding for
Virgin Islands Telephone Corp. d/b/a
Innovative Telephone, Caribbean
Communications Corp. d/b/a Innovative
Cable TV St. Thomas-St. John, and St.
Croix Cable TV, Inc. d/b/a Innovative
Cable St. Croix

PSC Docket No. 582

AMENDED MEMORANDUM OPINION AND ORDER

By: Ronald W. Belfon, Esquire
Hearing Examiner

In this proceeding the Hearing Examiner has considered the Consolidated Application of Stanford Springel as Chapter 11 Trustee for the Bankruptcy Estate of Innovative Communication Corporation (the "Trustee"), and the National Rural Utilities Cooperative Finance Corporation ("CFC") (the "Applicants") for the consent of the Public Services Commission ("PSC") to transfer of control of Virgin Islands Telephone Corp., doing business as Innovative Telephone ("Vitelco"), Caribbean Communications Corp., doing business as Innovative Cable TV

St. Thomas-St. John ("Innovative Cable STT-STJ"), and St. Croix Cable TV, Inc., doing business as Innovative Cable TV St. Croix ("Innovative Cable STX") (the "Cable Entities") from the Trustee to CFC. In addition to the Applicants the Staff of the Public Services Commission is a party to this proceeding.

By this Order the Hearing Examiner finds that the requested transfer of control is in the best interests of the telephone and cable television ratepayers of the United States Virgin Islands and recommends approval of the Application for Transfer of Control, subject to the conditions and clarifications discussed below.

1. Procedural Background

On July 13, 2009 the Joint Applicants submitted their Consolidated Application for transfer of control of Vitelco and the Cable Entities from the Trustee to CFC. In addition to Vitelco, each cable entity is a subsidiary of Innovative Communication Corporation ("ICC"). Consolidated Application at 4. The Cable Entities are likewise subsidiaries of ICC. Consolidated Application at 5. ICC is in Chapter 11 bankruptcy proceedings, and on April 9, 2009 the United States Bankruptcy Court authorized the Trustee and CFC to seek regulatory approvals for the sale of the stock and various assets of ICC. Consolidated Application at 3. Any transaction that would result in the sale of ICC's interests in Vitelco and the Cable Entities, which are regulated public utilities in the Virgin Islands, must have the express written approval of the PSC. 30 V.I.C. 43. If the transfer of control is approved, Vitelco and the Cable Entities will be wholly-owned subsidiaries of Caribbean Asset Holdings, LLC ("CAH" or CFC USVI Holdco), which is in turn a wholly owned subsidiary of CFC. Consolidated Application at 5. Therefore, upon approval, CFC will control Vitelco and the Cable Entities. Consolidated Application at 2.

CFC is a non-profit cooperative association organized under the law of the District of Columbia for the purpose of providing financial services for its members, which consist primarily of rural electric and telephone utility companies. It has members in 49 states, the District of Columbia and two United States territories. Consolidated Application at 6.

The Rural Telephone Finance Cooperative ("RTFC") is likewise a non-profit District of Columbia cooperative association, providing financial services to the telephone utility members of CFC. Consolidated Application at 7. RTFC is not under the control of CFC's board of directors. However CFC provides significant funding to RTFC and manages its daily operations under a management agreement. *Id.* RTFC is the principal lender to ICC, and at the beginning of 2009 had a claim against it for an unpaid balance of

$496,867,899. *Id.* at 6,7. RTFC has made arrangements to assign its claim to CFC and therefore it is CFC that seeks to acquire the assets of ICC in this proceeding.

For purposes of its telephone and cable television operations in the United States Virgin Islands CFC has created two wholly owned holding companies for the purpose of holding the stock and assets of its (CFC's) subsidiaries in the United States Virgin Islands. Consolidated Application at 7. One is DTR Holdings, LLC ("DTR") (also referred to as CFC USVI Holdco). The other is Caribbean Asset Holdings, LLC ("CAH"). After approval of the transfer of control in this proceeding Vitelco will be a direct, wholly-owned subsidiary of DTR. Consolidated Application at 5. Also after approval of the transfer of control, the Cable Entities will be direct, wholly-owned subsidiaries of DTR. *Id.*

CAH is the "umbrella holding company created by CFC" to acquire the stock and assets of Vitelco and the Cable Entities. Consolidated Application at 7. CFC is CAH's sole member. *Id.* CAH is the sole member of DTR. *Id.* at 8. After approval of the proposed transfer CAH will be "the indirect, 100-percent voting-and equity-interest holder of Vitelco and the Cable Entities. Consolidated Application at 8. Also after approval of the proposed transaction, DTR will be the direct holder of the stock and assets of Vitelco and the Cable Entities. *Id.* Even though it controls DTR, CAH will not directly own any of the stock and assets of Vitelco and the Cable Entities.

On January 8, 2009 the Trustee received a credit bid of $250,000,000 from RTFC for the assets of ICC. On March 13, 2009 the Trustee agreed to accept the credit bid, finding it to be the "highest and best" bid for ICC's assets. Consolidated Application at 10, 11. The Trustee and CFC now seek the PSC's approval for the transfer of control of the assets of Vitelco and the Cable Entities that would result from CFC's purchase of the assets of ICC under the circumstances described above. The provisions of 30 V.I.C. §43a and 30 V.I.C. §313 require the PSC's approval for the transfers of control of Vitelco and the Cable Entities, respectively.

2. Submissions of the Parties on Issues Presented by the Application

In July 2009 the Hearing Examiner conducted several conferences with the parties to develop an agreed upon list of issues to be resolved in evaluating the merits of the Consolidated Application. After considering the issues proposed by the parties, on August 18, 2009, the Hearing Examiner entered an order setting forth those issues. The parties submitted discovery requests on August 14, 2009. Responses to discovery requests were submitted on

August 31, 2009. The Trustee and CFC submitted pre-filed direct testimony on September 11, 2009 and the PSC Staff submitted its pre-filed testimony on September 25, 2009. Hearings were held for the purpose of cross-examining the parties on their pre-filed testimony on November 3, 4, and 5, 2009 on St. Thomas, St. John and St. Croix. The Hearing Examiner issued several orders establishing a schedule for the submission of post hearing briefs by the parties. At or shortly before the dates for submission of briefs the parties submitted joint motions for extension of time to file briefs, stating that they were close to a settlement but needed additional time to finalize the terms of the settlement. The last such motion was made during a telephone status conference February 9, 2010. By Order dated February 11, 2010 the motion was granted, extending to February 19, 2010 the deadline for submission of a settlement agreement or briefs in support of each party's respective positions, and set March 12 as the date by which the Hearing Examiner would submit his Report and Recommendation to the Commissioner. Order Granting Fifth Request for Extension of Post-Hearing Briefing and Report Schedule dated February 11, 2010.

On February 19, 2010, the parties made post hearing submissions stating that they would not be able to reach a settlement and stating their positions on the issues for determination.

On February 26, 2010 the parties submitted a settlement agreement which they titled "Transfer of Control Agreement" and which shall be referred to herein as the "TOCA."

3. Issues to Be Resolved for Approval of Transfer of Control of Vitelco and the Cable Entities from the Trustee to CFC

There were four general issues to be resolved in considering the Consolidated Application for transfer of control of Vitelco and the Cable Entities. Issue 1 was the ultimate question to be resolved as to Vitelco: Whether the PSC should authorize the proposed transfer of control of Vitelco from the Trustee to CFC pursuant to 30 V.I.C. §43a. That general issue had ten sub-issues, a to o. Issue 2 was: Whether the PSC should consent to the proposed transfer of control of Vitelco under the 1989 Settlement Agreement among Vitelco, (New) ICC, Vitelcom Cellular, Inc., RTFC, and the PSC. That general issue had two sub-issues, a and b. Issue 3 was: Whether the proposed sale will adversely affect Vitelco's operations or rates. That issue had no sub-issues. Issue 4 was the ultimate issue as to the Cable Entities: Whether the PSC should consent to the transfers of control of the Cable Entities under 30 V.I.C. §313. That issue had four sub-issues, a to d. The Hearing Examiner sets forth the following findings on each of these issues and sub-issues in the following sections.

A. Issue 1 Sub-Issues

Issue 1(a) Whether CFC is financially able to own and operate Vitelco

The Hearing Examiner finds that CFC is financially able to own and operate Vitelco. In his direct testimony, CFC Witness Steven L. Lilly testified that CFC is a stable financial organization that has been in business for forty years. Lilly Direct at 6. He testified further that it is rated by major ratings firms, that its debt is rated single A by the three major United States credit rating agencies, that it has assets in excess of $20 billion, and has substantial experience in lending to local telephone and cable television companies. *Id.* He testified also that CFC has over twenty years of knowledge about the business of Vitelco and the Cable Entities from RTFC's twenty years of experience as the primary lender to ICC. *Id.*

In his direct Panel testimony PSC Staff Witness Madan conceded that CFC is qualified to own Vitelco but contended that more information is needed about its personnel and process proposals before a conclusive finding is made on this issue. Madan Direct at 23.

On Issue 1(a) the Hearing Examiner finds that CFC's testimony is persuasive. The PSC Staff's testimony, while conceding the issue, incorrectly seeks to make a finding on this issue contingent on resolution of other designated issues in this proceeding.

Issue 1(b) Whether CFC is qualified to own and operate Vitelco, including whether it is qualified to retain and supervise experienced and able management, and how and when it will identify and commit to the appointment and/or retention of a competent and proven management team.

The Hearing Examiner has already found that CFC is qualified to own and operate Vitelco. The Examiner further finds that CFC is qualified to retain and supervise experienced and able management. At the hearing held on November 3, 2009 CFC Witness Robin Reed testified that the existing management at Vitelco and the Cable Entities is qualified to continue in that role. Reed Cross-Examination at 60. She added that CFC intends to continue to work with existing management upon approval of the transfer of control. *Id.* She testified further that CFC plans to retain senior and able management with substantial telecommunications experience to head DTR and that it is considering candidates for that purpose. *Id.* Finally in this regard she stated that if approved, the transfer of control would improve stability of the work forces of Vitelco and the Cable Entities. *Id.*

The PSC Staff Panel's direct testimony ("Panel Direct") had stated that there was insufficient information at that time for the PSC to know how to resolve this issue. Panel Direct, page 17, lines 8, 13-15. During cross-examination at the November 4, 2009 hearing, however, the Staff witnesses acknowledged that the Staff had issued discovery requests on this issue. The Hearing Examiner concludes that information submitted in CFC Discovery Responses 1-15, 3-2(B) and 3-3(B) provide reasonable supplemental information to demonstrate CFC's ability to identify, retain, and supervise experienced, competent and able management.

1(c) Whether CFC is committed to the provision of quality services to USVI consumers

The Hearing Examiner finds that CFC is committed to the provision of quality services to USVI consumers. In his direct testimony CFC Witness Lilly testified that approval of the transfer of control would improve the rehabilitation of Vitelco and the Cable Entities by improving their access to capital, enabling them to focus on their core businesses, improve operations and plan for new and enhanced services. Lilly Direct at 9. He noted that the companies' interim management had initiated an engineering study of the companies' cable networks and stated that CFC was eager to see the completed study and to use it in making decisions on the rehabilitation of

Vitelco as well. *Id.* at 9, 10. He also stated that the management of Vitelco and the Cable Entities had adopted an updated Disaster Preparedness and Restoration Plan which CFC supports and will use in reviewing responses to disasters and taking steps to minimize customer service disruption. *Id.*

In her direct testimony CFC Witness Reed stated that current management of Vitelco has established a customer care team that has instituted new measures for getting customer feedback and that it has provided all Vitelco employees with its quality of service and surveillance objectives. Reed Direct at 10, 11. She stated that this effort had improved Vitelco's performance in meeting the PSC's service objectives and surveillance levels. *Id.* at 11. She stated that going forward CFC will ensure that all company staff, including technicians and customer service staff, will be trained in new technology, equipment and product offerings and customer service. *Id.* Finally in this regard, she stated that interim management of the Cable Entities had undertaken digital conversion of those systems under the direction of the Trustee that will increase available capacity and permit the offering of additional services. She stated that an engineering study was likely to recommend the deployment of a hybrid fiber-coaxial cable network for telephony, including voice over Internet protocol, video programming and high speed internet access. She added that CFC believes that there are significant opportunities for other modern offerings and features that residents and businesses on the mainland enjoy. *Id.* There was no testimony from the PSC staff disputing the testimony of the CFC witnesses on this sub-issue.

Issue 1(d) Whether CFC has satisfied the Section 43a requirement that it provide the PSC with sufficient assurance that "obligations to employees [with respect to pension benefits previously enjoyed] will be satisfied as they become due." 30 V.I.C. §43a(c)

The Hearing Examiner finds that CFC has satisfied the requirements of 30 V.I.C. §43a(c) regarding the sufficient assurance of satisfying the obligations to employees of pension benefits previously enjoyed, as required by 30 V.I.C. §43a(c). In his direct testimony CFC Witness Lilly stated that CFC or its designee will "assume and continue" the pension plans for Vitelco and the Cable Entities. Lilly Direct at 11. He stated that the Pension Benefit Guaranty Corporation ("PBGC") had said that without that commitment from CFC benefits under the pension plans "may be subject to reductions upon plan termination." *Id.* On cross-examination Witness Lilly repeated this commitment to bring the plans current in their obligations to the PBGC. Lilly Cross at 35. He stated that funding for this purpose would be in the form of a loan. *Id* at 36. CFC Witness Reed testified that upon closing on the transfer of control "CFC will ensure that VITELCO has sufficient funds to make payments to the pension fund in accord with the acceptable range of the funding requirements prescribed by" PBGC. Reed Direct at 14. On Cross-examination Staff Witness Madan stated that meeting the PBGC funding requirements would be sufficient. Madan Cross at 42.

Based on the testimony of CFC's witnesses the Hearing Examiner is persuaded that CFC has provided sufficient assurance that the pension obligations of Vitelco and the Cable Entities to their employees will be satisfied as they become due. This assurance satisfies the requirements of 30 V.I.C. §43a.

Issue 1(e) How CFC proposes to address employment matters whether such employment matters exist upon the date of transfer of control or arise after such date, and whether such matters arise or develop as a result of the transfer of control.

To the extent that this issue relates to the matter of pension benefits the Hearing Examiner finds that this issue is resolved as discussed under Issue 1(d) above. The Hearing Examiner further finds that, as related to the issue of the retention and training of the workforces of Vitelco and the Cable Entities, CFC has reasonable plans for retaining, training and providing incentives for their employees, both prior to and after the proposed transfer of control. CFC Witnesses Lilly and Reed testified that the renewed investment that CFC would make in Vitelco and the Cable Entities would increase the stability of their workforces. Lilly Direct at 12. Reed Direct at 14. CFC's Discovery Responses 1-15b and 1-15c further state that CFC will provide mandated training on upgraded plant and equipment, and that it will continue employee incentive and rewards programs already implemented by current management of the companies. Finally, Section 1.b.1 of the Transfer of Control Agreement provides that CAH "will not make material changes to Operating Company management (except for cause and except as provided in Section 9 below) for at least one year from the Effective Date of this Agreement." The Hearing Examiner notes that, as related to this commitment, the exception from Section 9 of the Agreement concerns the institution of voluntary early retirement programs.

Issue 1(f) Whether a reasonable allocation of the purchase price to each entity is made.

The Hearing Examiner finds that CFC has made a reasonable allocation of the purchase price to each entity to be acquired. More precisely, the Hearing Examiner finds that the Fair Value Assessment mandated by the Financial Standards Accounting Board's Standard 141, and to be used by CFC for determining the value of the acquired entities, is reasonable. CFC Witness Lilly testified that CFC would use FAS 141 in restructuring Vitelco's balance sheet and that under that standard the allocation of the purchase price to Vitelco is not relevant. Lilly Cross at 38, 46. He testified that the valuation would be made at the time that the assets of Vitelco and the Cable Entities come on the books of CFC. *Id.* at 42. He added that the Fair Value Assessment is not intended to affect local rates. CFC Witness Reed testified that because that company had made a credit bid for ICC and its affiliated entities there was actually no purchase price to be allocated. Reed Cross at 81. She added that ultimately the balance sheet values would be determined using the FAS 141 Fair Value Assessment. *Id.*

Staff Witness Madan testified that he had questions about the appropriateness of using the Fair Value Assessment for CFC's acquisition of Vitelco and the Cable entities. Madan Direct at 16. He suggested that the assessment should have no impact on local rates. *Id.* at 16, 25. On cross-examination Witness Madan elaborated, stating that there was insufficient information as to what the Fair Value Assessment would be. Madan Cross at 51 and 52. He added that information on the fair value assessment should have been provided already. *Id.* at 54. He conceded, however, that FAS 141 requires that the assessment be done immediately prior to the time that the acquisition is completed. *Id.* at 56.

Section 3.b of the TOCA provides that prior to its effective date CAH shall have completed a Fair Value Assessment of Vitelco under FAS 141. It further provides that a "*pro forma* Vitelco balance sheet after adjusting for the FVA" will be provided to the PSC promptly upon completion.

The Hearing Examiner is persuaded that valuation of the assets and liabilities of Vitelco and the Cable Entities should be accomplished under the provisions of FAS 141. CFC's testimony has demonstrated that under that method allocation of the purchase is not relevant to this transfer of control proceeding since there is no "price" to be allocated. The balance sheet entries for allocation purposes will be determined by the Fair Value Assessment. The Hearing Examiner further finds that the Fair Value Assessment is to be measured as of the date of CFC's acquisition of Vitelco and the Cable Entities. Section 3.b of the TOCA resolves the matter of timing of the presentation of those values to the PSC. Section 3.b of the TOCA also provides that the Fair Value Assessment is not binding on the PSC for ratemaking or local regulatory accounting purposes. Therefore CFC's proposed method of valuation for purposes of the transfer of control is reasonable. Until the transfer of control is completed no value can be assigned to the acquired assets and therefore there will be no value of assets and liabilities to be allocated among the acquired entities.

This finding does not affect the rates or ratemaking treatment of the acquired entities. CFC may not increase, or adjust, the rates of Vitelco or the

Cable Entities based on the Fair Value Assessment unless it receives authorization to do so in a rate proceeding before the Public Services Commission. Under Section 7.e of the TOCA no such increase or adjustment may be applied for before January, 2014.

1(g) Whether VITELCO's balance sheet will be restructured in a form and content which meets reasonable, objective professional accounting standards and principles

The Hearing Examiner notes that this issue is related to the previous issue 1(f). The entries on Vitelco's balance sheet will be determined by the results of the Fair Value Assessment. To the extent that that assessment is conducted reasonably Vitelco's balance sheet entries will be restructured in a form and content which meets reasonable, objective professional accounting standards and principles.

The Fair Value Assessment will determine the starting value of all assets and liabilities of Vitelco and the Cable Entities. Included in these assets and liabilities will be the companies' equity and debt. Lilly Cross at 38. As noted in the discussion of Issue 1(f) above, the acquisition value of these items, including common and preferred stock, cannot be determined until the date of acquisition, or transfer of control. Sections 3, 4, and 5 of the TOCA provide measures for the treatment of Vitelco's assets, debt, and equity, respectively. For the reasons discussed in Issue 1(f) above, the

Hearing Examiner finds that the Fair Value Assessment under FAS 141, in combination with the provisions of TOCA sections 3, 4, and 5 are consistent with a reasonable, objective, and professional accounting standard and principle to be used in restructuring Vitelco's balance sheet.

Again as noted in the discussion of Issue 1(f), this finding does not affect the rates or ratemaking treatment of Vitelco. CFC may not increase, or adjust, the rates of Vitelco based on the Fair Value Assessment unless it receives authorization to do so in a rate proceeding before the Public Services Commission. Moreover, no such increase or adjustment may be applied for before January, 2014.

Issue 1(h) Whether the Applicant Proposes a Capitalization Plan Which Meets Reasonable, Objective Professional Standards and Principles

The Hearing Examiner finds that the Joint Applicants have proposed a capitalization plan that meets reasonable, objective professional standards and principles. CFC Witness Lilly testified that CFC will provide sufficient liquidity to Vitelco and the Cable Entities to enable them to meet their working capital plans. Lilly Cross at 39. He stated that CFC would provide low-cost capital so that the companies would not need to access third party capital markets. *Id*. CFC Witness Reed testified that although plans were not yet finalized, CFC anticipated that a new Hybrid Fiber Optic Coaxial system would be part of the companies' needed capital expenditures. Reed Cross at 74, 75. She testified that, when finalized, CFC was prepared to present the capital improvement program to the Public Services Commission. *Id.* at 76.

The PSC Staff did not offer testimony directly on this issue. In its Closing Brief ("Staff CB") it did identify it as one of the issues remaining after testimony and hearings. Staff CB at 6. However it did not address this issue in its discussion of the remaining issues at pages 7 and 8 of the CB.

The Hearing Examiner is persuaded that the Joint Applicants have committed to a capitalization plan that will meet the working capital needs of Vitelco. The Hearing Examiner therefore finds that the Joint applicants' proposal in this regard meets reasonable, objective professional standards and principles.

Issue 1(i) Whether Vitelco's Capital Structure Will be Restructured to a Reasonable Approximation of Rate Base

This issue is related to the resolution of Issues 1(f) and 1(g), discussed above. As discussed there, the Fair Value Assessment under FAS 141 will determine issues such as the restructuring of Vitelco's balance sheet and the restructuring of the capital structure. CFC's Discovery Response 1-3(a) states that the results of the Fair Value Assessment "will determine the opening balance sheet for each company." It further stated that "VITELCO's equity … will be equal to the difference between (a) the Fair Value Assessment of the company, and (b) its debt balances and other liabilities , plus (c) any Converted Preferred."

In its CB the PSC Staff stated: "In the absence of a business plan, capital investment plan, and balance sheets … it is impossible to say when and if VITELCO's capital structure will be restructured to a reasonable approximation of rate base." CB at 8.

The Hearing Examiner finds that, as with the restructuring of Vitelco's balance sheet, the ultimate restructuring of its capital structure cannot be determined until the Fair Value Assessment is completed. Under FAS 141 that assessment cannot be completed until the acquisition of Vitelco and the Cable Entities is completed. The Hearing Examiner further finds that this process is required and that in combination with TOCA sections 3, 4, and 5 it provides a proper basis to restructure Vitelco's capital structure to a reasonable approximation of rate base. This finding does not affect the rates or ratemaking treatment of Vitelco's assets and liabilities. CFC may not increase, or adjust, the rates of Vitelco unless it receives authorization to do so in a rate proceeding before the Public Services Commission. No such increase or adjustment may be applied for before January 2014.

Issue 1(j) Whether Vitelco Will Regain Access to Capital Markets Necessary for Operations and Reinvestment

While it is impossible to predict future events, the Hearing Examiner finds that Vitelco will have a more realistic chance of regaining access to capital markets necessary for its operations and reinvestment if the transfer of control is approved than if it is not approved. For the reasons stated in the discussion of Issue 1(h) above, CFC's witnesses have testified credibly that it would provide low-cost capital to Vitelco and the Cable Entities so that they would not need to access third party capital markets. Section 4.a of the Transfer of Control Agreement ("TOCA") submitted by the parties on February 26, 2010 provides that Vitelco will have $113,000,000 in secured debt. Section 4.b of that Agreement provides that if it is approved CFC will make the debt available for assumption by a third party buyer of Vitelco at that buyer's option.

In its CB the Staff stated that in the absence of business and capital investment plans it is impossible to say when and if Vitelco will gain independent access to capital markets. However in Section 2.a of the TOCA, CFC affiliate CAH commits to presenting the PSC a business plan with financial projections and planned expenditures within four months of the transfer of control. In Section 2.b of the TOCA It further commits to make average annual investments in the plant of Vitelco and the Cable Entities of $15,000,000 for a period of five years following the transfer of control.

Issue 1(k) Whether, when and under what pre-closing and post-closing circumstances will CFC develop and implement a reasonable business plan that adequately demonstrates a commitment to fund and rehabilitate Vitelco's infrastructure

As noted in the discussion under Issue 1(i) above, in Section 2.a of the TOCA, CFC affiliate CAH commits to presenting the PSC a business plan with financial projections and planned expenditures within four months of the transfer of control. In Section 2.b of the TOCA it further commits to make average annual investments in the plant of Vitelco and the Cable Entities of $15,000,000 for a period of five years following the transfer of control. In direct testimony CFC Witness Reed had stated that CFC planned to provide "reasonable and necessary financing" to fund Vitelco's capital expenditure program. Reed Direct at 9. The Hearing Examiner therefore concludes that CFC has committed to develop a reasonable business plan within a specified time period. The Hearing Examiner further finds that CFC has demonstrated a commitment to fund and rehabilitate Vitelco's infrastructure.

Issue 1(l) Whether CFC Has Developed a Reasonable Capital Expenditure Program that Addresses Rate-Base and Depreciation Matters, Immediate Service Needs, Service Expansion and Technology Improvements, Where Warranted, Subject to Approval of the PSC

The Hearing Examiner finds that CFC has demonstrated that it has a reasonable plan for capital expenditures to meet the operating expenses and infrastructure investment of Vitelco and the Cable Entities. CFC Witness Reed testified that it plans to provide reasonable and necessary financing for the companies' "short- and/or long-term financing." Reed Direct at 9. She also testified that the funding plans would be based on a networking engineering study. *Id.* CFC Witness Lilly also testified to this effect. Lilly Cross at 36. The amount of the commitment to capital expenditures is substantial. Section 2.a of the TOCA provides that CAH will provide a business plan to the PSC that will include financial projections and planned capital expenditures within four months of consummation of the transfer of control. Section 2.b of the TOCA for an average annual investment in Vitelco and the Cable Entities of $15,000,000, with $12,000,000 of that to be invested in Vitelco. Section 2.d of the TOCA provides that the capital expenditure plan shall be subject to PSC approval.

Issue 1(m) Whether CFC Agrees and is Able to Meet the Quality of Service Standards Established by the Commission In 30 V.I. Rules & Regulations §§13-121 to 13-129 and as Identified and Encouraged to be Developed in PSC Docket 578

The Hearing Examiner finds that CFC committed to adhere to the PSC's quality of standards and is able to meet those standards. CFC Witness Lilly testified that its commitment of capital will enable Vitelco and the Cable Entities to provide new and enhanced services. Lilly Direct at 9. CFC Witness Reed testified that CFC is committed to compliance with all government regulations and franchise agreements. Reed Direct at 10. Section 7.a of the TOCA provides that Vitelco agrees to strive to meet existing quality of service standards and to work with the PSC to establish revised quality of service standards and to meet those standards. Finally, Section 7.a of the TOCA provides that if within a year of the establishment of any standards they remain unmet, Vitelco shall provide a plan to achieve compliance within 30 days.

Issue 1(n) Whether Any and What Transitional Problems, Issues or Events Are Anticipated as a Result of the Transfer of Control of VITELCO and What Monitoring, Evaluative or Operational Review Will Be Required by the PSC in Anticipation of Such Problems or Events

The Hearing Examiner finds that no transitional problems, issues or events resulting from the transfer of control have been identified. As CFC notes in its Proposed Findings of Fact and Conclusions of Law ("CFC Brief"), "the sooner the transfer takes place, the sooner VITELCO and the Cable Companies will have the necessary resources necessary" for needed improvements. CFC Brief at 13. CFC also states that

> the transfer will be seamless. Customers will not experience any changes in services or service providers. Customers will continue to pay their bills in the same places they now pay them. And customers will be paying the same rates that they currently pay for phone and basic cable services. *Id.*

Quality of service standards will continue to be monitored and implemented as discussed in Issue 1(m), above.

Issue 1(o) Whether the Proposed Transfer of Control, As Compared to Other Available Alternatives, Will Benefit the USVI

The Hearing Examiner finds that, as compared to the only other alternative, namely, having no purchaser available to manage and provide capital to Vitelco and the Cable Entities, the proposed transfer of control will benefit the United States Virgin Islands. CFC Witness Lilly testified that during the bidding for the assets of ICC in the bankruptcy proceedings there were no acceptable bids other than the credit bid of the Rural Telephone Finance Corporation. CFC's subsidiaries were designated as the purchaser in that process. Lilly Cross at 30. In his direct testimony CFC Witness Lilly testified that there would be five significant benefits from the transfer of control for residents of the U.S. Virgin Islands Lilly Direct at 7. He reiterated this point on cross-examination, stating:

> First, they will ensure continuity of service for the U.S. Virgin Islands consumers. Second, it will permit rehabilitation of Vitelco, Innovative Cable TV, St. Thomas/St. John, and Innovative Cable TV St. Croix. Third, it will improve disaster planning and [recovery]. Fourth, it will ensure continued funding of pension benefits. And fifth, it will improve stability for the work forces of all of these businesses.

Lilly Cross at 32. In submitting the TOCA, the Public Services Commission Staff no longer questions the adequacy of these benefits. In addition to these benefits, Section 2.b of the TOCA provides for capital expenditures on Vitelco and the Cable Entities by CFC subsidiary CAH of $15,000,000 per year for five years. This is a very substantial benefit. Moreover, Section 7.e of the TOCA provides that the companies may not initiate an investigation for a change in rates "any earlier than January 2014." The Hearing Examiner thus concludes that the proposed transfer of control will be of great benefit to the United States Virgin Islands.

Therefore the Hearing Examiner finds that because Sub-Issues 1(a) to 1(o) are answered in the affirmative the PSC should authorize the transfer of control of Vitelco from the Trustee to CFC pursuant to Section 43(a) of Title 30 of the Virgin Islands Code.

Issue 2. Whether the PSC Should Consent to the Proposed Transfer of Control of VITELCO under the 1989 Settlement Agreement among VITELCO, New ICC, Vitelcom Cellular, Inc., RTFC, and the PSC

a. **Whether Compliance with the Terms of the 1989 Settlement Agreement or Whether Failure of Compliance with the Terms of the 1989 Settlement by the Transferee Under the Proposed Sale Will Adversely Affect VITELCO's Operations or Rates**

b. **Whether a Replacement for the 1989 Settlement Agreement Must Be Negotiated, Agreed and Adopted Among the Parties and the Proposed Transferee or Whether Instead, the Existing 1989 Settlement Agreement Must Be Adopted by and Compliance Required of the Proposed Transferee**

The Hearing Examiner finds that the 1989 Settlement Agreement, while suitable and appropriate for the conditions in the Virgin Islands telecommunications market of that time, may not be most appropriate for the state of the present market and infrastructure. We now have the parent of Vitelco and the Cable Entities in the midst of bankruptcy proceedings with their infrastructure badly in need of repair and upgrading, and lacking adequate capital to make the repairs and upgrades. Trustee Witness Smyl testified that previous ownership of the companies had neglected the network. Smyl Cross at 89. Trustee Witness Milner testified that the existing cable network is compromised in two ways: one, its inherent design, and two, the age and condition of amplifiers and other devices on its system. Milner Cross at 92, 93. For the United States Virgin Islands telecommunications market to be functionally viable, significant investment in technology not installed in 1989 should be made. Absent the proposed transfer of control there is no prospect of such investment being made.

The TOCA addresses management, funding and capitalization, planning, quality of service, pension, and timing of rate proceeding matters. It addresses market conditions present in the United States Virgin Islands today, not twenty-one years ago. And it addresses market participants in the United States Virgin Islands telecommunications industry today, not twenty-one years ago. For these reasons the Hearing Examiner agrees with the recommendation at page 16 of CFC's Brief that the PSC replace the 1989 Settlement Agreement with the TOCA.

Summary of the TOCA

The TOCA addresses fourteen subjects involving the operation of Vitelco and the Cable Entities upon consummation of the transfer of control from the Trustee to CFC. Those subjects, section by section, cover:

1. CFC's Qualifications to Own and Operate Vitelco and the Cable Entities

2. The Business Plan and Capital Expenditures for Vitelco and the Cable Entities

3. The Treatment of the Assets and Mortgages of Vitelco and the Cable Entities and the Role of the SFAS 141 Fair Value Assessment in Rate Proceedings

4. A Description of and Detailed Treatment of Vitelco's Debt

5. Valuation and Disposition of Vitelco's Capital Stock, the Treatment of its Equity and the Payment of Dividends

6. Requiring PSC Approval for Certain Transfers of Control of Vitelco Stock and of Controlling Interests in CAH or DTR

7. Quality of Service Standards, the Treatment of Tax Expenses, and a Rate Freeze

8. Permissible Management Fees and the Treatment of Intercompany Payables and Receivables

9. Continuation of Employee Staffing Levels and Transfer of Sponsorship of the Vitelco and ICC Pension Plans

10. Reporting Requirements

11. Access to Information Related to the Regulated Activities of Vitelco, CAH, and DTR, Including Financial Records, Tax Returns, and Employment Contracts

12. Agreement that CFC, CAH, and DTR Are Not Regulated Entities Except to the Extent that Their Actions Affect Vitelco and the Cable Entities

13. Agreement that Vitelco Will Pay All Future PSC Assesments Within 30 Days of Receipt

14. Termination of the 1989 Settlement Agreement Between Vitelco, Atlantic Tele-Network Co., RTFC, and the PSC

Although the TOCA does not explicitly address, point by point, the issues designated for resolution in this proceeding, its overall effect is to favorably resolve those issues. In submitting the TOCA the parties agree that it is a reasonable resolution of the issues in the case. The parties therefore request that the TOCA be adopted and that the proposed transfer of control be approved by the PSC.

The Hearing Examiner concludes that the TOCA will result in the provision of substantial benefits to the United States Virgin Islands and that it is in the public interest. The Hearing Examiner further concludes that the TOCA should replace the 1989 Settlement Agreement.

Issue 3 Whether the Proposed Sale Will Adversely Affect Vitelco's Operations or Rates

The Hearing Examiner finds that the proposed sale will not adversely affect Vitelco's operations or rates. Quite to the contrary, for the reasons cited in the discussion of Issues 1(l) to 1(n) above, the effect on operations and customers will be seamless, substantial funding will be provided for needed facilities and equipment upgrades, and rates will be frozen until at least 2014.

Issue 4 Whether the PSC Should Consent to the Transfers of Control of Caribbean Communications Corp., doing business as Innovative Cable TV St. Thomas-St. John ("Innovative Cable STT-STJ"), and St. Croix Cable TV, Inc., Doing Business as Innovative Cable TV St. Croix ("Innovative Cable STX" and, Collectively With Innovative Cable STT-STJ, the "Cable Companies") from Stanford Springel, as Chapter 11 Trustee for the Bankruptcy Estate of Innovative Communication Corporation to the National Rural Utilities Cooperative Finance Corporation ("CFC") Pursuant to Section 313 of Title 30 of the Virgin Islands Code.

a. **Whether CFC is Financial Able to Own and Operate the Cable Companies**

b. **Whether CFC is Qualified to Own and Operate the Cable Companies, Including Whether it is Qualified to Retain and Supervise Experienced and Able Management**

c. **Whether CFC is Committed to the Provision of Quality Services to USVI Consumers**

d. **Whether the Proposed Transfer of Control Will Benefit the USVI as Compared to Other Available Alternatives**

For the reasons discussed under Sub-Issues 1(a) to 1(c) above the Hearing Examiner finds that Sub-Issues 4(a) to 4(c) should be answered in the affirmative. The Hearing Examiner further finds that for the reasons discussed under Sub-Issue 1(o) above Sub-Issue 4(d) should be answered in the affirmative. The Hearing Examiner also takes official notice that on December 7, 2009 the Federal Communications Commission issued its order approving the transfer of control of the Cable Entities from the Trustee to

CFC. While that order is not controlling on the Public Services Commission's consideration of the proposed transfer, it does show that for purposes of the Communications Act of 1934 CFC is financially able and qualified to own the Cable Entities. Therefore, because Sub-Issues 4(a) to 4(d) are answered in the affirmative the Hearing Examiner finds that the PSC should consent to the transfer of control of the Cable Entities from the Trustee to CFC pursuant to Section 313 of Title 30 of the Virgin Islands Code.

Wherefore the Hearing Examiner submits the attached Findings of Fact dated March 12, 2010 and a Proposed Order to the Public Services Commission.

Dated April 8, 2010

/s/ Ronald W. Belfon
Ronald W. Belfon, Esquire
Hearing Examiner